87-1436

No.

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

JACOB SAMPSON,

Petitioner,

v.

JED WEIDELL, et al.,

Respondents.

PETITION FOR WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

6138 N. Clark St.,
Chicago, Ill.60660
(312) 761-0766

Jacob Sampson
Petitioner pro se

QUESTIONS PRESENTED FOR REVIEW

1. Whether trial Court's denial of Discovery to plaintiff was proper ?

2. Whether violations of plaintiff's Constitutional and Civil Rights claims pending before this Court, should be viewed in context of other numerous abuses, including permanent injuries - the result of attempted murder.

3. Whether District Judge's dismissal of the Complaint, prompted by his conflict of interest, was proper ?

4. Whether Seven Circuit's dismissal of plaintiff's Patent claims, without jurisdiction, was proper ?

5. Whether the forcible entry, search of plaintiff's premises and seizure of his property was legal ?

6. Whether awarding attorneys fees to defendants was proper ?

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED FOR REVIEW	i
TABLE OF CONTENTS	ii & iii
TABLE OF AUTHORITIES	iv & v
PETITION FOR WRIT OF CERTIORARI . . .	1
OPINIONS BELOW	2
JURISDICTION	2
CONSTITUTIONAL PROVISONS AND STATUTES INVOLVED	3
STATEMENT OF THE CASE	4
THE CASE AT BAR IS NOT AN ISOLATED INCIDENT	7
REASONS FOR ALLOWING THE WRIT	9
PETITIONER STATED A PATENT CLAIM . .	10
NEED FOR JURY TRIAL	13
PETITIONER STATED A CLAIM UNDER THE FOURTEENTH AMENDMENT	16
PETITIONER STATED A CLAIM UNDER 42 U.S.C. §1981	18
PETITIONER STATED A CLAIM UNDER 42 U.S.C. §1983	21
PETITIONER STATED A CLAIM UNDER 42 U.S.C. §1985	22
ISSUES PRECLUDING SUMMARY JUDGMENT . .	24
CONCLUSION	25

Page

CERTIFICATE OF SERVICE 26

APPENDIX:

1. District Court's MEMORANDUM OPINION . . . . . 1a - 33a

2. Seventh Circuit's ORDER 34a - 42a

3. Seventh Circuit's denial of motion for Reconsideration 43a

4. U.S. Supreme Court's Extension of time for filing Writ . . . 44a

5. District Court's denial change of venue 45a

6. District Court's denial of motion for perjury 46a

7. District Court's denial of Evidentiary Hearing . . . 47a

8. Chicago Fire Department's Rule for Fire Prevention Inspectors 48a

9. Defendant KNAPCIK's deposition of "no gas leak." 49a

10. Sampson's Patent 50a

11. Holac's (Holz) Patent . . . 51a

12. Chicago Police Recomendation 52a

13. Medical Affidavit 53a

14. Patent Attorney's letter . . . 54a

TABLE OF AUTHORITIES

Cases:	Page
Adickes v. Kress & Co., 398 U.S.176 (2d Cir. 1970) . . .	13
Griffin v. Breckenridge, 403 U.S. 88; 91 S.Ct. 1790; 29 L.Ed.2d 338 (1971) . . .	23,24
Hampton v. Hanraham, 600 F.2d 600 (7th Cir. 1979) . . .	13
Johnson v. Robinson, 296 F.Supp. 1165, affirmed 89 S.Ct. 1622, 394 U.S. 847 . . .	17
Klupt v. Blue Island Fire Dept., 489 F.Supp. 195	20
Marlowe v. Fisher Body, 489 F.2d 1060 (6th Cir. 1973) . .	20
Murphy v. Mount Carmel High School, 543 F.2d at 1189 n.1 (7th Cir. 1976)	24
Ortiz v. Bank of America, 547 F.Supp. 550 (1982)	19
Poller v. Columbia Broadcasting, 368 U.S. 464 (1962)	15
Shaare Tefila Congregation et al., v. Cobb et al. S.Ct. 85-2156 (1987) . .	20
Spriggs v. City of Chicago, 523 F.Supp. 146 (N.D.Ill.E.D.1981)	19

Page

Constitutional Provisions:

US Const. Amend. IV 3

US Const. Amend. VII 3, 14

US Const. Amend. XIV 3,15,16

Statutes:

28 U.S.C. Rule 103 17

28 U.S.C. §1254 3

28 U.S.C. §1295 3,10

28 U.S.C. §1338 3,10

42 U.S.C. §1981 3,4,18

42 U.S.C. §1983 3,4,15,21

42 U.S.C. §1985 3,4,22,23

Other Authorities:

US Patents No.No. 4,187,773; 4,360,952; 4,437,208 . . . 7,10,24,50a

US Patent No. 4,612,682 . . . . . 11, 51a,

US Supreme Court Rule 19(1) 3

Federal Practice and Procedure, Vol.2B, Sec.873 "Jury Trial" 14

Chicago Police Report No. C-293916 . . . 7

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1987

JACOB SAMPSON,

Petitioner,

v.

CHIEF JED WEIDELL, CAPT. WILLIAM CRAWFORD, GREG WALSH, JACK McGOVERN, WILLIAM GRAVES, ENRIQUE BEAUCHAMP, DENNIS EDWARDS, JOHN LYNCH, JOHN GIOIA, CARL ZAPILER, PEDRO VEGA, MICHAEL JOHNSON, PHILLIP KENNEALLY, KENNETH KNAPSIK, and Two Unknown Individuals, JOHN DOE and RICHARD ROE,

Respondents.

==========

PETITION FOR WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

==========

Petitioner JACOB SAMPSON respectfully prays that a Writ of Certiorari issue to review the judgment and order of the United States Court of Appeals for the Seventh Circuit entered in this proceeding on June 22, 1987.

OPINIONS BELOW

The decision of the Court of Appeals, not reported, is set out at pp. 34a-42a of the Appendix. The order denying Reconsideration, not reported, is set out at p.43a.

The District Court Memorandum Opinion, not reported, is set out at pp. 1a - 33a of the Appendix.

JURISDICTION

Petitioner seeks a review of a judgment of the Court of Appeals dated June 22, 1987. Reconsideration was denied by Order dated September 3, 1987. On September 23, 1987, Justice John Paul Stevens granted an Order extending time to file Petition for Writ of Certiorari to and including January 31,1988.

Since substantial Federal question arising under the Constitution of the United States are involved in this case, the jurisdiction of this Court is invoked under the provisions of Article II, Section 2 and 19 of the Constitution of the United States,

28 United States Code Sections 1254(1),1295 (a)(1) and 1338(a), and Rule 19(1) of the Rules of the United States Supreme Court.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The resolution of the issues presented in this petition involves the Fourth, Seventh and Fourteenth Amendments of the United States Constitution and the federal statutes authorizing civil action for deprivation of rights, 42 U.S.C. §1981, §1983 and §1985.

United States Constitution, Amendment IV provides in pertinent part:

> "The right of the people to be secure in their persons, houses,papers, and effects, against unreasonable searches and seizures, shall not be violated...."

United States Constitution, Amendment VII provides in pertinent part:

> "In suit of common law..the right for trial by jury shall be preserved,and no fact tried by a jury shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law."

United States Constitution, Amendment XIV provides in pertinent part:

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States;nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

This is an action brought under 42 U.S.C. Sections 1981, 1983 and 1985, by a pro se litigant, an Immigrant of Jewish faith and ancestry, and a "Graduate" of the Auschwitz, german concentration camp, for declaratory relief against a District Judge and damages against Municipal employees of the City of Chicago and their agents.

The complaint alleged that on February 17, 1983, defendants - Seventeen (17) Chicago Firemen, among them Chief JED WEIDELL (german surname), one Chicago Policeman and two (2) civilians, dressed like firemen,

forced their way in Sampson's business premises. The defendants stated that they are searching for a reported gas leak. After the defendants entered Sampson's premises, refusing to identify themselves by name, Captain WILLIAM CRAWFORD (his name was revealed in secret to Sampson by a fireman PHILLIP KENNEALLY, for which he "accidently" lost his life (see Appendix, page 31a, paragraph 2), said defendant CRAWFORD made the following uncontroverted statement:

NOW LISTEN YOU F..... JEWBOY, WHEN I AM HERE THIS PLACE IS MINE"

indicating that they knew that plaintiff is Jewish and the hostility for him to expect.

After completing their inspection, Sampson was ordered by WEIDELL to show the garage, where Sampson was kept in the cold for about thirty (30) minutes, while CRAWFORD did remain with other firemen on Sampson's premises against Sampson's objections.

After returning from the garage Sampson

was in a complete daze, in addition to the sleepless nights prior to this incident (to avoid the frequent nightmares with screams of tortured children by the german doctors, Sampson often works through the night) seeing "firemen" behaving like the german "gestapo", Sampson was scared to ask why their pockets are bulging, the blueprints in disarray, most of the tools misplaced, everything in the laboratory in a complete chaos, Sampson decided to take a nap and to clear his head, consenting to firemen's request to bring an explosion meter to check out the premises and the surrounding neighbourhood, proving no trace of a "gas leak".

After the nap Sampson assessed the following situation:

(a) The Duplicating machine badly damaged by firemen touching the wrong push-button.

(b) Blueprints and prototypes of Patented Food Processing Kitchen Appliances missing.

(c) Small Prototype models and blueprints

of the Patented Packaging Machine missing.

(d) Various Instruments and Gauges, which were too bulky for their pockets, it seems, were removed and carried out, for which the firemen had enough time and man-power to accomplish.

THE CASE AT BAR IS NOT AN ISOLATED INCIDENT

Since the publication of plaintiff's most recent Patents No.No. 4,187,773; 4,360,952; and 4,437,208; in the United States Official Gazette, Foreign and Domestic Trade Journals in 1978,an incredible chain of terror and harassment against the Inventor Sampson continues to this day by the Chicago Police, Chicago Firemen and their agents.

On June 26, 1979, Walter McCann, meter reader for the Commonwealth Edison Company was apprehended red handed while burglarizing Sampson's home. Chicago Police falsified the Report No. C-293916 thus denied relief for loss of patent related property.

On July 13, 1984, NESTOR W. CHAKONAS, Chicago Police Commander, 24th District, issued the following recomendation:

> "That this complaint be filed without any further action, and that no additional complaints be taken from Mr. Jacob Sampson."

On September 5, 1984, one COLEN HANSEN with CHICAGO POLICE attempted to murder Sampson, followed with false arrest, and imprisonment for 18 hours without food and medication, leaving Sampson with a permanent lung contusion injury. Case pending before the United States District Court for the Northern District of Illinois, Eastern Division, No. 84 C 7749.

On Saturday, February 8, 1986, after 5:00 P.M., Firemen of the same Chicago Engine Company 70, attempted to force their entry into Sampson's premises through every door and window. Sampson called the Police, to which Lt. HAMILTON responded as follows:

> "If you are going to be a cute kike and complain about this incident, you will be arrested"

which he did. Complaint for false arrest, false imprisonment, and attempted burglary pending before the United States District Court for the Northern District of Illinois, Eastern Division, case No. 86 C-2668, scheduled for trial by Jury.

REASON FOR ALLOWING THE WRIT

The gist of the issues presented by this case concerns the question whether this Court will allow some Municipal employees to make of CHICAGO another AUSCHWITZ ?

As it is apparent that some Municipal employees of the City of Chicago do display a contemptuous disregard to human rights, to the United States Constitution, Bill of Rights, Statutes and respect for the Judicial system, pursuing their greed for unjust enrichment by any means, faithfully following Adolph Hitler's method: "Rob the victim and destroy him afterwards, so, no claim later."

PETITIONER STATED A PATENT CLAIM

Petitioner Sampson will follow the sequence of the Seventh Circuit's Order on the issue who has jurisdiction of this appeal. Cases arising in whole or part under the patent laws may be appealed only to the Federal Circuit. 28 U.S.C.§§1295(a)(1) and 1338 (a). In his pleadings, (R. 5, 7, 40; R.62 ¶11, ¶24; R. 73 ¶2, ¶7; R. 81 ¶4, R. 86 ¶3, ¶4; R. 99 ¶4), Sampson asserted that he was seeking relief for the theft of PATENTS, arising under the patent laws, the district Court did have jurisdiction under 28 U.S.C. § 1338(a) and the Court of Appeals for the Federal Circuit does have jurisdiction under 28 U.S.C. §1295(a)(1), and there was a proper basis for the transfer of this case.

That the Court of Appeals for the Seventh Circuit's denial of the transfer was clearly erroneous is further substantiated by the fact that one of Sampson's Patents No. 4,360,952 "Meat Tenderizer" was sold to the

HOLAC MASCHINENBAU GmbH company in West Germany, by some Defendant(s) in this action, who were the only ones, beside the Patent Attorney to have access to the blueprints and prototypes.

The HOLAC Company applied and was granted a United States Patent No. 4,612,682 "Apparatus for Treating Meat" under false pretense of being the original inventor.

A Patent Infringement Suit would be proper, requiring about $500,000., which Sampson is not in a position to raise due to impoverishment and impaired health caused by Defendants' repugnant antisemitic terror, which should shock the conscience of our Society.

It follows that the Seventh Circuit does agree with the district court's order to the extent it grants summary judgment to defendants on these patent claims, and it seems that the Seventh Circuit is not cognizant of district court's real motive,i.e.lack of

impartiality on grounds of Judge Marovitz's and his law clerk's conflict of interests, since his nephew State Senator William Marovitz depends entirely on Chicago City Hall's good will and cooperation for his re-election. Plaintiff found no case where District Judge MAROVITZ would rule against the City of Chicago, for the last 10 years, in a blatant violation of the oath given to uphold the Constitution and the Laws of the United States, which manifested itself in the following:

(a) Denial of Motion to transfer the case to another Court, (see Appendix, page 45a).

(b) Denial of Motion for sanctions for Defendants' perjury, (see Appendix, page 46a).

(c) DENIAL OF DISCOVERY to plaintiff, (see Appendix, page 47a).

District Court's Law Clerk Mr. Guberman while drafting District Court's Memorandum Opinion granting Summary Judgment to Defendants, was more concerned of being accepted

for employment in Defendants' Law Department, than in serving the cause of justice, which manifested itself in deliberately omitting in his Memorandum Opinion the word "PATENTED" among the sized plaintiff's property, (see Appendix, pages 5a, 27a - 29a) and falsely stating that Sampson never contested the "reported gas leak in his vicinity" (see Appendix, page 18a).

NEED FOR JURY TRIAL

After reviewing District Court's MEMORANDUM OPINION, Petitioner is uncertain of the appropriateness of summary judgment with respect to allegation of conspiracy.

The existence of conspiracy, which Petitioner asserted in his pleadings,is essentially a factual issue that the jury, not the trial judge, should decide. Adickes v. Kress & Co., 398 U.S.176 (2d cir. 1970; Hampton v. Hanraham, 600 F.2d 600, (7th Cir. 1979).

In this case Petitoner may have to prove his case by impeaching Respondents' testimony

and appealing to the jury to disbelieve all they said was true in their conflicting statements. In Moore's #5, as well as in the Federal Practice and Procedure, Volume 2B, Section 873 under "Jury trial of Right is stated:

> "If the issues are legal, the right to a jury trial exists. If they are equitable a jury may not be demanded."

The right to confront, cross-examine and impeach adverse witnesses is one of the most fundamental right sought to be preserved by the Seventh Amendment provision for jury trials in civil cases. The advantages of trial before a live jury with live witnesses, and all the possibilities of considering the human factors, should not be eliminated by substituting trial by affidavit and the sterile bareness of summary judgment. "it is only wehn the witnesses are present and subject to cross-examination that their credibility and the weight to be given their testimony can be appraised. Trial by affida-

vit is no aubstitute for trial by jury which so long has been the hallmark of 'even handed justice'." Poller v. Columbia Broadcasting, 368 U.S. 464 (1962).

Second, it was an error for the trial judge to grant summary judgment in favor of the defendants,when genuine issues of material facts exist concerning justifiability of forcible entry, illegal search and seizure of multi-million dollar patented property, deprivation of liberty in ordering the Petitioner in a cold garage for 30 minutes, and lack of authority and/or competence to conduct investigation of industrial premises. Third, it was an error for the trial judge to dismiss claims based on violation of Section 1983, which provides to citizens a cause of action against state actors or their private agents who cause a deprivation of Constitutional rights, since Petitioner's allegations do suggest a violation of rights under the fourteenth amendment,

to due process and equal protection.

Concerned that a material issue of fact may exist, Petitioner did seek leave to conduct Discovery,which the TRIAL COURT DENIED, see Appendix, page 47a, which states:

> "Plaintiff's motion for evidentiary hearing of all defendants is denied."

which by any standard is a violation of the Constitutional Fourteenth Amendment Right.

PETITIONER STATED A CLAIM UNDER THE FOURTEENTH AMENDMENT

One of petitioners asserted grounds for appeal, Amendment XIV provides in pertinent part:

> "No State shall make or enforce any law which shall abridge the privileges of citizens of the United States; nor shall any State deprive any person of life,liberty, or property,without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Based on said authority the District Court's dismissal of Complaint was clearly erroneous, where the Civil Rights Act grants

relief in cases involving alleged denials of due process and equal protection clauses of the Fourteenth Amendment, as stated in Johnson v. Robinson, 296 F.Supp.1165, affirmed 89 S.Ct. 1622, 394 U.S. 847.

The undisputed fraud perpetrated by defendants in stating: (Appendix, page 39a)

> "Later Sampson changed his story saying that he noticed nothing amiss until awakening from a nap he took after the defendants left."

and: (Appendix, page 40a)

> "Thus, because Sampson does not dispute the actual existence of gas leak in his neighborhood on the day in question, ..."

proves that indeed, their purpose was to deprive plaintiff of his liberty, property, and of due process, by any means, including misrepresentation, for their unjust enrichment, and evidently, racially motivated.

Thus, the granting of summary judgment to defendants was clearly erroneous, since the exclusion of Discovery affected the substantial rights of plaintiff. 28 U.S.C.Rule 103.

PETITIONER STATED A CLAIM UNDER 42 U.S.C.§1981

One of petitioner's asserted grounds for granting the Writ, Section 1981 provides:

> "All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens,...."

The question tendered is whether Section 1981 discrimination under the allegations of the Appeal in the Seventh Circuit, including inter alia, preventing to give evidence (District Court's denial, see Appendix, page 47a) and denial the equal benefit of all laws and proceedings for the security of persons and property. Initially then,the Court is faced with a question of statutory construction and accordingly, we must turn to the text of the statute as quoted above.

The statute's language is of extraordinary breadth. It does not speak in terms of

race, religion or nationality but, on the contrary, speaks of "all persons."

This act creates a cause of action against persons who violate the equal benefit of all laws and proceedings for the security of persons and property, and the right to be free from unequal punishment, pains, penalties .... See Spriggs v. City of Chicago, 523 F.Supp. 146 (N.D.Ill.E.D.1981).

Petitioner (plaintiff) in his complaint alleged that he is of Jewish faith and ancestry and that he was discriminated against on the basis of his racial identification. Though the defendants never made an attempt to deny their wrongdoing, only justifying, but equally deny their motive for the wrongdoing other than racial, and then claiming that something amiss with the plaintiff.

As stated in Ortiz v. Bank of America, 547 F.Supp. 550 (1982):

> "Without doubt blacks have been the subject of the most persistent racism in this country.

> Nonetheless, "racial" justification for discrimination against almost every immigrant (and native) group has plagued this country's intellectual history .... The history of "racial prejudice" against Jews throughout Europe and in this country appears to be so well known as almost not to require documentation."

A number of courts have allowed Section 1981 actions to be brought by Jews; some explicitly finding Jews covered. See Marlowe v. Fisher Body, 489 F.2d 1060 (6th Cir. 1973); Shaare Tefila Congregation at al. v. Cobb et al. S.Ct. 85-2156 (1987), and some implicitly finding so by determining the validity of the case on their merits. Klupt v. Blue Island Fire Dept., 489 F.Supp. 195.

Illustrative of this point from the Seventh Circuit, Sampson v. Raskin, et al., 84-1730 (1985):

> ".... the same characteristic which are immutable to the black race apply equally to the Jewish people. Like blacks, Jews have been the victim of historically pervasive discrimination ."

In this regard petitioner alleges that he

was in the course of the foregoing incident on February 17, 1983, and since, conspired against, and was deprived of his constitutional and civil rights, privileges and immunities to which he is entitled as a citizen of the United States.

PETITIONER STATED A CLAIM UNDER 42 U.S.C. §1983

Another of petitioner's asserted grounds for appeal, Section 1983 provides:

> "Every person who, under color of any statute, ordinance, regulation, custom,or usage, of any State of Territory,subjects, or causes to be subjected,any citizen of the United States or other person within the jurisdiction thereof to the deprivation of rights,privileges, or immunities secured by the Constitution and laws,shall be liable to the party injured in an action of law, suit in equity, or other proper proceeding or redress."

Petitioner's prima facie case offers a number of constitutional deprivations to accompany his conspiracy allegations. Petitioner's evidence in the instant case indicates that the defendants share in instigating

and preparing the unreasonable search and seizure of petitioner's property, which in petitioner's belief, was not the "search for the gas leak" which in defendants' own admission, there was no trace of it inside or outside petitioner's premises, anywhere, consequently, their objective was to get the PATENTS, the tools and the blueprints.

Furthermore, it appears that the case at bar is not a case of first impression,since the "Summerdale Police Scandals" involving Chicago police in burglarizing small businesses was known long before. Only this time on a grander scale, involving millions of dollars in damage.

PETITIONER STATED A CLAIM UNDER 42 U.S.C. §1985

The other asserted basis for appeal, Section 1985 provides in pertinent part:

> "If two or more persons in any State or Territory conspire for... the purpose of depriving.... any person of the equal protection of the laws,..whereby another is injured in his person or property

> the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators."

This act creates a cause of action against persons who conspire with some racial or class based invidiously discriminatory animus. The plaintiff's complaint alleged that defendants: Chicago Firemen, Chicago Police and their agents, conspired to cause loss of property, which inter alia, affects the Interstate Commerce,and deprived plaintiff of rights and privileges of a citizen of the United States. Plaintiff's complaint alleged racial discrimination and class-based animus. The "class-based, invidiously discriminatory animus" referred to in Griffin v. Breckenridge, 403 U.S. 88; 91 S.Ct. 1790; 29 L.Ed.2d 338 (1971),relates "to that kind of irrational and odious class discrimination based on national origin or religion," and as indicated by the Seventh Circuit's most recent comment on 1985, only those

classes falling within a broad interpretation of "suspect classifications" qualify for protection under the Griffin interpretation of the statute. Murphy v. Mount Carmel High School, 543 F.2d at 1189 n.1 (7th Cir. 1976). There can be no justification for reaching a different result in the present case where the statute explicitly provides for recovery by anyone injured as a result of the proscribed conspiracy, a conspiracy of striking resemblance to Nazi Germany.

ISSUES PRECLUDING SUMMARY JUDGMENT

1. Who reported a gas leak?
2. Was the Peoples Gas Company called in ?
3. Have Firefighters authority to conduct investigations? (Appendix, page 48a)
4. Was there a gas leak ?
5. If so, do you bring in 20 people to conduct an "investigation" ?
6. Once established that "no gas leak"why was plaintiff removed from his own premises and defendants remained ?
7. Why was plaintiff denied Discovery ?
8. Who sold Patent #4,360,952 to HOLAC Co.?

CONCLUSION

For the foregoing reasons, Petitioner JACOB SAMPSON, respectfully requests that this Honorable Court, in a gesture of fairness and compassion, grant the Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit to review the decision rendered by that Court on June 22, 1987, and should reverse that decision, or in the alternative transfer to the Court of Appeals for the Federal Circuit.

Respectfully submitted,

Jacob Sampson

Jacob Sampson, Plaintiff-Petitioner, pro se.

6138 North Clark Street
Chicago, Illinois 60660
(312) 761-0766

CERTIFICATE OF SERVICE

This is to certify that I am the Petitioner pro se, and that I have this date served copies of the above and foregoing Petition for Writ of Certiorari upon the following person by delivering three (3) copies personally to:

SHARON BALDWIN, Assistant Corporation Counsel of the City of Chicago, 610 City Hall, Chicago, Illinois 60602

This 29 day of January, 1988

Jacob Sampson

Jacob Sampson
Petitioner pro se.

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PROOF OF SERVICE:
3 copies received:

APPENDIX

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JACOB SAMPSON, Plaintiff, v. CHIEF JED WEIDELL, CAPT.WILLIAM CRAWFORD, GREG WALSH, JACK McGOVERN, WILLIAM GRAVES, ENRIQUE BEAUCHAMP, DENNIS EDWARDS, JOHN LYNCH, BRUCE DAHM, JAMES DOSENBACH, JOHN GIOIA, CARL McCOY, BERNARD ZAPILER, PEDRO VEGA, MICHAEL WHITE, MICHAEL JOHNSON, PHILLIP KENNEALLY, KENNETH KNAPSIK,and Two Unknown Individuals, JOHN DOE and RICHARD ROE, Defendants.	No.84C6360

MEMORANDUM OPINION

Motions for Summary Judgment and to Dismiss

Presenty before the Court is the Second Amended Complaint of the Plaintiff, Jacob Sampson ("Sampson").Although Sampson is now proceedng pro se, the Second Amended Complaint was drafted by appointed counsel.[1/] Named as defendants in the Second Amended Complaint are seventeen Chicago firemen,one Chicago policemen,defendant Knapsik, and two unknown individuals.[2/]

Sampson seeks compensatory and punitive damages, as well as attorney fees, for the alleged violations of his civil rights. Allthough Sampson may disagree,the Court was able to discern twelve claims in the Second Amended Complaint.The claims allege that the defendants: (1) conducted an illegal search and seizure in violation of the fourth amendment; (2) deprived him of property without due process in violation of the fourteenth amendment; (3) deprived him of property in violation of his right to equal protection under the fourteenth amendment; (4) denied him his right to equal protection under the law in violation of 42 U.S.C. §1981; (5) conspired to obstruct the due course of justice in violation of 42 U.S.C. §1985(2); (6) conspired to deny him his right to equal protection under the law in violation of 42 U.S.C. §1985(3); (7) failed to prevent or aid in preventing the commission of a Section 1985 conspiracy in violation of 42 U.S.C. §1986; (8) removed various prepatented prototypes,

sketches, devices and equipment from his business premises in violation of 35 U.S.C.§§ 1-281; (9) injured him in his business or property by engaging in a pattern of racketeering activity in violation of 18 U.S.C. § §1961-1968; (10) conducted an illegal search and seizure in violation of Article 1, Section 6 of the Illinois Constitution of 1970; (11) injured him through their willful and wanton misconduct in violation of Section 1-4-4 of Chapter 24 of the Illinois Revised Statutes; and (12) committed a forcible entry into his business premises in violation of Section 9-101 of Chapter 110 of the Illinois Revised Statutes.

The defendants have previously moved to dismiss nine of the above-mentioned claims. In a Memorandum Opinion dated November 14, 1985 the Court granted the defendants' motions, dismissing with prejudice claims numbered 2, 3, 4, 5, 6, 7, 9, 11, and 12.

Still pending before the Court are claims numbered 1, 8, and 10. Claims numbered 1 and

8 are federal law claims. Claim number 1 alleges a violation of Sampson's fourth amendment right to be free from unreasonable searches and seizures. Claim number 8 alleges a violation of Sampson's patent rights as protected by 35 U.S.C. §§1-281. Claim number 10 is a pendent stated law claim. Claim number 10 alleges a violation of Sampson's right under Article 1, Section 6 of the Illinois Constitution of 1970 to be free from unreasonable searches and seizures. The Court notes that it has not previously been asked to rule on these claims.

The operative factual allegations in Sampson's Second Amended Complaint, as distinct from the mere legal conclusions with which the complaint is replete, are as follows. On February 17,1983 the defendants forced their way into Sampson's premises. The defendants stated that they were searching for a reported gas leak. After the defendants entered Sampson's premises he was escorted to his garage by defendant Weidell. Sampson was made

to remain in his garage for thirty minutes. When Sampson was allowed to reenter his premises the defendants were still present. Sampson noticed that some of his property was either damaged or missing. The property at issue consisted of tools, instruments, prepatented prototypes, patentable equipment and devices, prepatented sketches and other machinery. The Court finds no allegations in the Second Amended Complaint that Sampson informed any of the Fire Department personnel that he believed that some of his property had been removed while he was in the garage with Weidell.

Presently pending before the Court are various motions of the defendants.[3/] Defendants Graves, Vega, Beauchamp, Edwards, Zapiler and McCoy have moved for partial summary judgment on the Section 1983 claim alleging a violation of Sampson's fourth amendment rights. These defendants testify in sworn affidavits that although they were dispatched to investigate the reported gas leak, they did not

enter Sampson's premises ("non-entry defendants"). Defendants McGovern, Walsh, White, Dahm, Lynch, Dosenbach, Gioia and police officer Knapsik have also moved for partial summary judgment on the Section 1983 claim alleging a violation of Sampson's fourth amendment rights. These defendants testify in sworn affidavits that although they entered Sampson's premises after being dispatched to investigate a reported gas leak in the vicinity, they did not remove or damage any of Sampson's property ("entry defendants"). Defendants Weidell and Crawford have also moved for partial summary judgment on the Section 1983 claim alleging a violation of Sampson's fourth amendment rights. Weidell and Crawford appear to state two grounds for partial summary judgment. The first is that although they entered upon Sampson's premises after being dispatched to investigate a reported gas leak in the vicinity , they did not remove or damage any of Sampson's property.

This ground will be considered along with the motion of the entry defendants. The second ground is that Weidell and Crawford, supervisory personnel, neither participated in, acquiesced to, not effectuated through any municipal policy or custom,any activity which constituted the alleged constitutional deprivation. Defendant Johnson moves for summary judgment on the grounds that he was not dispatched to respond to the reported gas leak and that he was not in the vicinity of Sampson's premises at the time of the alleged incident. Finally, all of the named defendants have moved to dismiss Sampson's patent theft claim on the grounds that it fails to state a claim upon which relief may be granted. Fed.R.Civ.P. 12(b)(6).

After a full review of the pleadings, memoranda, depositions and affidavits filed with the Court, as well as the oral testimony of Crawford and Weidell at the April 1, 1986 court hearing, for the reasons set

forth below, the motions for partial summary judgment and for summary judgment are granted. In addition, after a full review of the pleadings and the memoranda on file with the Court, for the reasons set forth below, the named defendants motion to dismiss is granted with prejudice.

The Court will first consider the various motions for summary judgment. Summary judgment shall be granted only when the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits,if any, and open court testimony show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(c). When a motion for summary judgment is made and supported as provided in the rule,an adverse party may not rest upon the mere allegations or denials of his pleadings, but his response, by affidavit or as otherwise pro-

vided in the rule, must set forth specific facts showing that there is a genuine issue for trial. Fed.R.Civ.P. 56(e). The evidence must be viewed in the light most favorable to the non-moving party. Adickes v. S.H. Kress & Co., 398 U.S. 144 (1970). If any doubt remains as to the existence of a genuine issue of material fact, such doubt must be resolved against the movant. United States v. Diebold, Inc. 369 U.S. 654 (1962). However, "the mere possibility that a factual dispute may exist, without more, is an insufficient basis upon which to justify denial of a motion for summary judgment." Posey v. Skyline Corp., 702 F.2d 102, 106(7th Cir. 1983). Only those inferences that follow reasonably from the evidence must be construed in favor of the non-moving party. State Bank of St.Charles v. Camic,712 F.2d 1140 (7th Cir. 1983). Finally, a genuine issue of credibility which would preclude summary judgment is not raised by evidence that is too

incredible to be accepted by reasonable minds. Simms v. Reiner, 419 F. Supp., 468, 475 N.D. Ill. 1976) citing Whitaker v. Coleman, 115 F.2d 305, 306 (5th Cir. 1940). In Whitaker the court stated that,

> [j]udges in giving [Rule 56's] flexible provisions effect must do so with this essential limitation constantly in mind. To proceed to summary judgment it is not sufficient then that the judge may not credit testimony proferred on a tendered issue. It must appear that there is no substantial evidence on it, that is, either too incredible to be accepted by reasonable minds or that conceding its truth, it is without legal probative force.

Whiteker, 115 F.2d at 306.

The court will first address the motion of the non-entry defendants for partial summary judgment. In order to recover damages under Section 1983 a plaintiff must prove that: (1) the defendants acted under the color of state law; (2) their action resulted in a deprivation of the plaintiff's constitutional rights; and (3) the actions of the defendants proximately caused the alleged

constitutional violation. Crowder v. Lash, 687 F.2d 996 (7th Cir. 1982). The non-entry defendants do not dispute that they were acting under color of state law. All of these defendants testify in their respective affidavits that on February 17, 1983 they were dispatched by the Chicago Fire Department to investigate a reported gas leak in the vicinity of Sampson's premises.

However, the non-entry defendants do dispute the allegation that their actions violated Sampson's right to be free from unreasonable searches and seizures. Each of these defendants testifies in his respective affidavit that his duties required that he be outside and each further testified that he never entered upon Sampson's premises.

In response, Sampson avers in his affidavit that twenty individuals entered his premises. Those twenty individuals were composed of seventeen firemen, one policeman, and

two unknown white male civilians who were slightly intoxicated. According to Sampson 's affidavit, the only individual wearing a name tag was the policeman, Knapsik. Therefore, Sampson does not have personal knowledge of the names of the individual firemen that allegedly entered upon his premises.

Also before the Court is a copy of an affidavit by Fire Commissioner Louis T. Galante ("Galante affidavit") which was filed in a related Illinois State Court proceeding, Sampson v. Weidell, et al., 83 L 50398. The Galante affidavit indicates that seventeen members of the Chicago Fire Department were dispatched to investigate the reported gas leak in the vicinity of Sampson's premises on February 17, 1983. The Galante affidavit lists the names of the Fire Department personnel that were dispatched.[4/] The names of the non-entry defendants are included in the Galante affidavit.

The Court also heard the oral testimony of defendants Crawford and Weidell on April 1, 1986. Crawford testified during cross examination by Sampson that a total of seventeen firemen responded to the reported gas leak. (Tr. 33). Crawford also testified during cross examination that the firemen on Engine 70 "had been ordered to open the fire hydrants. They were never in your building or near your building." (Tr. 33-34).

The firemen assigned to Engine 70 on February 17, 1983 were non-entry defendants Graves, Vega, Beauchamp, Edwards and Zapiler. The Court also notes that paragraph 18 of Sampson's affidavit corroborates Crawford's testimony that hydrants were being opened to flush the street. The sixth non-entry defendant is McCoy who was Weidell's driver. (Tr. 43). In his affidavit McCoy testifies that he was ordered by Weidell to maintain communications with the Main Fire Alarm Office in regard to the incident.

On a properly made and supported motion for summary judgment the non-moving party must set forth specific facts showing that there is a genuine issue for trial. Posey, 702 F.2d at 105; Fed.R.Civ.P. 56.The affidavits of the non-entry defendants,as well as the testimony of Crawford, uncontrovertedly indicate that the non-entry defendants did not enter Sampson's premises.Sampson's affidavit merely alleges that seventeen firemen entered his premises and that Sampson did see the names of these firemen on their uniforms. This is not the same as an averment that Graves, Vega, Beauchamp, Edwards, Zapiler and McCoy,the non-entry defendants,were in fact present on Sampson's premises. This is a very close distinction, but it is one which must be drawn in light of the strict requirement of Rule 56 of the Federal Rules of Civil Procedure. See Posey, 702 F.2d at 106.The mere possibility that a factual dispute may exist is an insufficient basis

upon which to deny a motion for summary judgment. Id. Unsupported by other evidence, Sampson's allegations in his affidavit that he saw seventeen firemen on his premises does not go far enough to rebut the non-entry defendants' unambiguous affidavits and the sworn oral testimony of Crawford. Accordingly, the motion of the non-entry defendants for partial summary judgment is granted.

The Court will consider next the motion for partial summary judgment by the entry defendants.As with the non-entry defendants, these defendants do not dispute that they were acting under the color of state law. Each of these defendants testifies in his affidavit that on February 17, 1983 he was dispatched to investigate a reported gas leak in the vicinity of Sampson's premises. Each of these defendants also testifies that he entered upon Sampson's premises in order search for a possible gas leak within the building. Finding no such gas leak on Samp-

son's premises, each of these defendants further testifies that he left the premises within a few minutes of entry. Finally,each of these defendants testifies that he neither damaged nor removed from the premises any of Sampson's property. In addition,Crawford and Weidell both testified during the April 1, 1986 hearing that they did not see any of Sampson's property taken from the premises. (Tr. 25, 66 and 85). In response, Sampson avers in his affidavit that Weidell removed Sampson from his premises. Sampson testifies that Weidell kept Sampson in a garage for thirty minutes. The Court notes that at the April 1, 1986 hearing, both Crawford and Weidell were questioned about the search of the garage. During direct examination Crawford testified that he and Weidell accompanied Sampson to the garage. The search of the garage took three or four minutes according to Crawford.Once the search of the garage was completed the three men

returned to Sampson's basement. (Tr. 22, 23). Weidell testified during direct examination that he,Crawford and Sampson went to search Sampson's garage. The search took a maximum of five minutes and that when the search of the garage was completed they all went back inside Sampson's premises. (Tr. 66).

Sampson further alleges in his affidavit that upon returning to his premises, all of the entrants were still present.In his affidavit in opposition to the pending motion for partial summary judgment Sampson alleges that when the defendants left,he took a short rest. After taking a short rest Sampson then noticed that some of his property was missing.[5/] The Court notes that these allegations are inconsistent with the averments in paragraph 6 of Sampson's Second Amended Complaint[6/] and with Sampson's sworn testimony at his deposition on May 9,1985.[7/] The Court also takes note that a party may not evade summary judgment by contending

that inconsistencies within his own averments raise genuine issues of credibility. See 6 Pt. 2 Moore's Federal Practice ¶56.15 [4] (2d Ed. 1985 Supp.).

In considering whether a genuine issue of material fact exists as to this unreasonable search and seizure there are four relevant questions. The first question is was there a search? The evidence on this point is uncontroverted. There was an entry by these defendants onto Sampson's premises for the avowed purpose of searching for a gas leak. This entry constitutes a search under the fourth amendment. However, this does not mean that the search was violative of Sampson's fourth amendment rights.

The second question is was the search unreasonable? The defendants testify in their affidavits that they were investigating a reported gas leak in the vicinity of Sampson's premises. Sampson does not contest this fact in his affidavit.

An entry by firemen to search for a reported gas leak is not unreasonable. The possible public danger from a gas leak in an urban building "presents an exigency of sufficient proportions to render a warrantless entry 'reasonable' ." People v. Holloway, 86 Ill. 2d 78, 85 (1981) quoting Michigan v. Tyler, 436 U.S. 499, 509 (1978).It is clear, therefore, that there was not an unreasonable search of Sampson's premises.

The third question is was there a seizure? The affidavits of the entry defendants, as well as the April 1, 1986 oral testimony of Crawford and Weidell, uncontrovertedly indicate that the entry defendants did not remove or damage any of Sampson's property. Sampson's affidavit merely alleges that after a short rest he noticed that some property was missing. Sampson does not allege in his affidavit that he saw the defendants or any of them damage or remove any of his property. Nor does Sampson allege in his

affidavit that he noticed that any of his property was missing at the time he and Weidell reentered his premises. Sampson's allegations are not the same as an averment that the entry defendants damaged or removed his property. This close distinction is one which must be drawn in light of the strict requirement of Rule 56 of the Federal Rule of Civil Procedure. See Posey, 702 F.2d at 106. Unsupported by other evidence, Sampson's allegations in his affidavit that after a short rest he noticed many of his belongings missing do not go far enough to rebut the entry defendants unambiguous affidavits and the credible sworn oral testimony of Crawford and Weidell. Accordingly, the motion of the entry defendants for partial summary judgment is granted.[8/]

The Court hastens to point out that in the preceding analysis it assumed arguendo that Sampson's allegations were true. However, as an alternative ground for granting

the motion of the entry defendants for partial summary judgment the Court holds that Sampson's allegations are too incredible to be accepted by reasonable minds. To deny a motion for summary judgment there must be substantial evidence in opposition to the motion on the tendered issue. In a case such as this where the allegations of the non-moving party are too incredible to be accepted by reasonable minds neither a genuine issue of material fact nor a genuine issue of credibility is raised. Whitaker, 115 F.2d at 306.

This Court does not believe that Rule 56 requires a trial judge to leave behind his commonsense in deciding a motion for summary judgment. The pertinent allegations in Sampson's Second Amended Complaint and his deposition testimony are markedly inconsistent with the allegations in Sampson's affidavit in opposition to the motion for summary judgment. As the Court noted above,

Sampson alleges in paragraph 6 of the Second Amended Complaint that upon returning to his premises from the garage he noticed that some of his property was either missing or damaged. Sampson's deposition testimony is to the same effect. He testified at his deposition that upon returning to his premises he saw that the pockets of the firemen were bulging with his property. In light of Sampson's otherwise contentious behavior during the search of his premises the Court finds that Sampson's apparent failure to confront the defendants with his perception that some of his property had been removed or damaged during his absence to be significant.

Sampson's most recent version of what transpired during the search of his premises is contained in his affidavit opposing the pending motion for summary judgment. In that affidavit Sampson alleges that he did not notice that property had been removed until after the firemen had left his premises and

not until after he had taken a short rest. This Court is convinced that the issues of fact raised by Sampson on this claim are not issues which it could reasonably characterize as genuine. On the contrary, they are sham issues which should not subject these municipal employee defendants to the burden of a trial. See Radobenko v. Automated Equipment Corp., 520 F.2d 540, 544 (2d Cir. 1975). Accordingly, the entry defendants' motion for partial summary judgment is also granted on this alternative ground.

Defendants Weidell and Crawford also seek partial summary judgment on the Section 1983 claim alleging a violation of Sampson's fourth amendment rights on the grounds that Sampson has failed to allege any basis for supervisory liability. The Court is unable to discern in Sampson's Second Amended Complaint any theory of liability which is premised on Weidell's and Crawford's status as supervisory personnel.

However, assuming arguendo the existence of such a theory of liability in the complaint, the motion of these defendants is granted. Defendants rely on Rizzo v. Goode, 423 U.S. 362 (1976) for the proposition that supervisory liability on an individual basis under Section 1983 is limited to situations where the supervisor actually participated in or aquiesced to the activity which constituted the alleged constitutional deprivation. For the reasons stated above in the Court's discussion of the motions by the non-entry defendants, the Court has held that Sampson has failed to raise any genuine issues of material fact which would lead a trier of fact to believe that he was deprived of any constitutional rights. Since Sampson has failed to establish that there is any genuine issue of material fact on the issue of whether he was deprived of any constitutional rights,the motion of Weidell and Crawford for partial summary judgment

on a respondeat superior claim is granted.

The final motion for summary judgment before the Court is that of Michael Johnson. Johnson seeks summary judgment on the grounds that he was not dispatched to respond to the reported gas leak in the vicinity of Sampson's premised on February 17, 1983. Johnson further testifies in his affidavit that he was not on the scene at the time of the gas leak incident.

The only evidence of Johnson's presence is the Galante affidavit. Johnson is listed as one of the Fire Department personnel that was dispatched in regard to the reported gas leak. However, there is evidence before the Court that the Galante affidavit is in error as to its inclusion of Michael Johnson. Philip J. Stelnicki, an Assistant Governmental Affairs Officer for the Chicago Fire Department, testified in his affidavit that Johnson's name was mistakenly included in the Galante affidavit. Stelnicki testified that

his statement was based upon a careful review of Fire Department records. Johnson indicates in his motion that the name of Michael Jensen should have been included in the Galante affidavit instead of Johnson's.

Sampson does not contest this apparent error in the Galante affidavit. Neither Sampson's responsive pleading nor affidavit responds to the facts alleged by Johnson and Stelnicki. In fact, Sampson's only "response" to Johnson s argument is to make reference to Jensen's presence during the incident. Plaintiff's Response to Defendants' Motion to Dismiss p.4. Therefore, Johnson's motion for summary judgment is granted.

The Court next considers the defendants' motion to dismiss.The defendants have moved to dismiss Sampson's patent claim brought under 35 U.S.C.§§1-281. When ruling on a motion to dismiss, the notice pleading philosophy of the Federal Rules of Civil Procedure requires that a complaint be read libera-

lly. Conley v. Gibson, 355 U.S.41-48 (1957). All of the plaintiff's well pled allegations are accepted as true. Schuer v. Rhodes, 415 U.S.232 (1974). A complaint should not be dismissaed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in his claim which would entitle him to relief.Conley, 355 U.S. at 45-46. Despite these liberal rules of modern federal pleading,a court need not accept as true conclusory allegations of a legal nature, City of Milwaukee v. Saxbe, 546 F.2d 693, 704 (7th Cir. 1976), and complaints still must contain either direct or inferential allegations respecting all the material elements necessary to sustain a recovery under a viable legal theory. Sutliff, Inc. v. Donovan Companies, Inc. 727 F. 2d 648, 654 (7th Cir. 1984).

In his Second Amended Complaint, Sampson alleges generally that he is seeking relief under 35 U.S.C.§§1-281. Sampson fails to

identify any specific provisions of Title 35 which were allegedly violated by the defendants.The Court is unable to discern any set of facts in Sampson's Second Amended Complaint which would entitle Sampson to relief pursuant to Title 35 in the event that his allegations were proven true. Therefore, defendants' motion to dismiss is granted and Sampson's claim under Title 35 is dismissed with prejudice.

In summation, the Court grants the motions of the defendants for summary judgment and dismissal. Specifically, the Court grants the motions for partial summary judgment by the non-entry and entry defendants on the Section 1983 claim alleging a violation of Sampson's fourth amendment rights.The Court also grants Weidell and Crawford's motion for partial summary judgment on the possible respondeat superior claim arising out of the alleged violation of Sampson's fourth amended roghts. Also granted is Johnson's

motion for summary judgment. Finally, the motion of the defendants for dismissal of the patent claim brought under 35 U.S.C. §§ 1-281 is dismissed with prejudice.

The only claim still before the Court is Sampson's pendent state law claim alleging a violation of Sampson's right under state law to be free from unreasonable searches and seizures. There being no federal law claims remaining before the Court in this action to which this claim may pend, it is dismissed.

With the granting of the defendants' motions and the dismissal of the pendent state law claim, there are no further claims pending in this action.[9/] Sampson has 10 days after the entry of this judgment in which to file a postjudgment motion for reconsideration pursuant to Rule 59(e) of the Federal Rules of Civil Procedure. In the event that Sampson does not file a timely postjudgment motion for reconsideration,

then he has 30 days after the entry of this judgment in which to file a notice of appeal with the Clerk of the District Court. Fed. R. App. P. 4(a).

ENTER:

Signed: Abraham Lincon Marovitz

JUDGE

Dated: May 30, 1986

FOOTNOTES

1. Sampson initiated this action by filing a four count pro se complaint.The Court, on its own motion, appointed counsel to represent Sampson. Appointed counsel filed two amended complaints on Sampson's behalf. Thus, the complaint presently before the Court is not a "pro se" complaint. Several months after the filing of the Second Amended Complaint the Court granted, without objection by Sampson, appointed counsel's motion for leave to withdraw. The Court asked Sampson if he wished to have new counsel appointed to represent him. Sampson declined and has chosen to proceed pro se since the withdrawal of counsel.

2. Defendant Phillip Kenneally was dismissed on the suggestion of death.

3. As a preliminary matter, Sampson argues that the defendants' various motions for summary judgment ought to be denied because of their failure to comply with local rule 12(e). Local rule 12(e) requires a party filing a motion for summary judgment to file a statement of material facts as to which it claims there are no genuine issues. According to local rule 12(e), "failure to submit such a statement constitutes grounds for denial of the motion." Although the rule states that a failure to comply constitutes grounds for denying the motion, denial is not made mandatory by the language of the rule. Given the particular facts and circumstances of the case before this Court, the Court does not believe that the interest of justice would be served if it exercised its discretion to deny defendants' motions on this ground.

4. As the Court's discussion of defendant Johnson's motion for summary judgment indicates, infra, the Galante affidavit inaccurately includes the name of an individual not dispatched by the Fire Department to respond to the reported gas leak. However, the error is as to the name of the individual dispatched and not as to the total number of Fire Department personnel dispatched.

5. Paragraph 19 of Sampson's affidavit states that"Sampson worked all night prior to Firemens [sic] invasion, exhausted, after a short rest noticed many of his belongings missing as outlined in his Second Amended Complaint."

6. Paragraph 6 of Sampson's Second Amended Complaint alleges that, "[w]hen the Plaintiff was allowed to return to his business establishment, the Defendants were present but certain of Plaintiff's property, including tools, instruments, prepatented prototypes and patentable equipment and devices, prepatented sketches, and other machinery was damaged and/or missing."

7. At his May 9, 1985 deposition Sampson, who was represented by appointed counsel sel, was asked the following questions and he gave the following answers:

Q. Well now, Mr. Sampson, are you saying that these items somehow turned up missing while you were in the garage?

A. That s correct.

Q. And so you just assume that firemen were the ones that took the items but you don't know?

A. Not I assume. I am sure of it.

Q. Did you see them take the items?

A. I saw them. Their bulging pockets. That's all that I saw.

Q. But you saw bulging pockets but ...

A. Bulging pockets.

Sampson Dep. p. 66

8. Since the Court holds that there was no fourth amendment seizure, the fourth question - was the seizure reasonable?- need not be answered.

9. There being no further claims against any of the named defendants in the action pending before this Court, the Court notes that there are no claims pending before it against either of the unnamed defendants. Service was never made on either of the unnamed defendants. Therefore, neither of the unnamed defendants was ever a party to this action.

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604
Submitted June 10, 1987*
June 22, 1987

Before
Hon. WILLIAM J. BAUER, Chief Judge
Hon. RICHARD D. CUDAHY, Circuit Judge
Hon. FRANK H. EASTERBROOK, Circuit Judge

JACOB SAMPSON, Plaintiff-Appellant,	)	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 86 - 2133 v.	)	
JED WEIDELL, et al., Defendants-Appellees.	)	No. 84 C 6360 Abraham Lincoln Marovitz, Senior District Judge

ORDER

Jacob Sampson filed a complaint under 42 U.S.C.§1983 charging members of the Chicago police and fire departments with various violations of the Constitution and federal law. Sampson added pendent state claims.The district court granted motions resulting in dismissal of all but three of the claims. The court later granted summary judgment against Sampson on these three claims, and he appeals from that decision.

Sampson contends that the defendants, upon the fabricated excuse of investigating a gas leak, forced their way into his "business establishment" (as the complaint describes it) and helped themselves to his property, which included patented items. Defendants deny these allegations.While all but one of the defendants admit they were dispatched to Sampson's premises to invesstigate a possible gas leak,[1] six defendants moved for summary judgment on the ground that they had not entered Sampson's premises. Seven other defendants admitted entering Sampson's premises but moved for summary judgment after swearing in affidavits that they neither removed nor damaged any property. Defendants Weidell and Crawford,supervisory personnel, contested any liability on the additional ground that they did not participate, aquiesce in,or effectuate through any municipal policy activities that constituted a constitutional deprivation. Finally,

all defendants moved to dismiss the patent theft claim on the ground that it failed to state a claim upon which relief could be granted.

The district court granted defendants' motions for summary judgment, concluding that Sampson had not responded to the motions with facts of sufficient specifity to demonstrate that genuine issues of fact existed for trial, see Posey v. Skyline Corp., 702 F.2d 102, 106 (7th Cir. 1983), and that Sampson's allegations were too incredible to be accepted by reasonable minds, see Whitaker v. Coleman, 115 F.2d 305,306 (5th Cir. 1940). As to the claim under 35 U.S.C. §§1-293 (which is the only citation Sampson gives for his patent claim), the district court found that Sampson had alleged no facts that would entitle him to relief. The district court then dismissed the pendent state law claims because all federal claims had been wrapped up.

We must first decide who has jurisdiction of this appeal. Cases arising in whole or part under the patent laws may be appealed only to the Federal Circuit. 28 U.S.C. §§12-95(a)(1) and 1338(a). We do not think, however, that any part of Sampson's claim "arises under" the patent laws. Nothing in the patent laws prohibits theft of models, drawings, and the like; these are items of personal property governed by the rules applicable to other personal property. Because Sampson has stated nothing remotely like a patent claim, we have jurisdiction of his appeal. It follows that we agree with the district court's order to the extent it grants summary judgment to defendants on these "patent" claims.

Fed. R. Civ. P. 56(c) provides that the district court shall grant summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show

that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." In determining whether the district court appropriately granted summary judgment, "all factual inferences are to be taken against the moving party and in favor of the opposing party." Adickes v. S.H.Kress & Co.,398 U.S. 144, 158 (1980); International Administrators, Inc. v. Life Insurance Company of North America, 753 F.2d 1373, 1378 (7th Cir. 1985). Once a motion for summary judgment has been made and properly supported, however,the nonmovant has the burden of setting forth specific facts showing the existence of a genuine fact for trial. Celotex Corp. v. Catrett, 106 S. Ct. 2548 (1986); First National Bank of Arizona v. Cities Service Co., 391 U.S. 253, 288- 289 (1968); Posey, 702 F.2d at 105; Fed. R. Civ. P. 56(e). There is no genuine issue for trial "unless there is sufficient evidence favoring the

non-moving party for a jury to return a verdict for that party. If the evidence is merely colorable or is not significantly probative summary judgment may be granted." Anderson v. Liberty Lobby, Inc., 106 S. Ct. 2505, 2511 (1986) (citations omitted). Self-contradiction on the part of the party opposing the motion may indicate that there is no genuine issue for trial. The district court found extensive self-contradiction. For example, Sampson initially said that he knew the defendants stole from him because he saw them leave with bulging pockets. Later Sampson changed his story, saying that he noticed nothing amiss until awakening from a nap he took after the defendants left.

When the tale told by a complaint is as unusual as Sampson's, and the plaintiff has changed stories, a court is entitled to demand some particulars before setting the case for trial. The particulars in this case are thin and support a suspicion that some-

thing is amiss. Our review of the record discloses that Sampson does not actually contest the existence of a gas leak in the vicinity of his business; he says, rather, that having found no evidence of escaping gas on his premises, defendants were present on his property in violation of the Fourth Amendment. Much like a burning building, however, the potential danger caused by a gas leak "clearly presents an exigency of sufficient proportions to render a warrantless entry reasonable ." See Michigan v. Tyler, 436 U.S. 499, 509 (1978). Thus, because Sampson does not dispute the actual existence of a gas leak in his neighborhood on the day in question, the district court properly concluded that defendants did not, in entering or searching the premises, violate the Fourth Amendment.[2]

On the matter of theft, in response to defendants' categorical denials that they damaged or removed Sampson's personal pro-

perty, Sampson now does not maintain that he saw any of the defendants in possession of any of the missing property.The property that Sampson believes vanished is too bulky to be carried in firefighters pockets (it includes blueprints, tools, wrenches, prototype machines, microscopes, "optical devices", gauges, taps, wheels, and "lift-truck maintenance tools") and unlikely to be missed until after a nap. Factual averments as ambiguous as those with which Sampson sought to stave off summary judgment fall short of the specificity required by Fed. R. Civ. P. 56(e) to establish genuine issues of fact requiring a trial.

AFFIRMED

CUDAHAY, Circuit Judge, concurring in part and dissenting in part:

I agree that this 1983 suit is an implausible affair and that there is no genuine dispute about the legality of the entry. I do not believe, however, that plaintiff's

theft claim -- however credible or incredible -- can be said to lack specificity.

FOOTNOTES

* After preliminary examination of the briefs, the court notified the parties that it had tentatively concluded that oral argument would not be helpful to the court in this case. The notice provided that any party might file a "Statement as to Need of Oral Argument." See Fed. R. App. P. 34 (a); Circuit Rule 34(f). Appellant has filed such a statement and requested oral argument. Upon consideration of that statement, the briefs, and the record, the request for oral argument is denied and the appeal is submitted on the briefs and record.

1 Defendant Michael Johnson filed an affidavit stating that he was never dispatched to Sampson's premises. Sampson did not dispute Johnson's affidavit, and the district court dismissed Johnson as a defendant. Sampson does not contest this decision on appeal.

2 Although defendants assert that their search of the premises lasted only 4-5 minutes, Sampson claims he was kept in his garage for 30 minutes while defendants pillaged his business. Arguably, a question of the "reasonableness" of the scope of defendants' search is raised.It appears from the record, however, that defendants followed-up their initial visual inspection of the premises with an inspection employing an explosion meter. Even accepting Sampson's version of the facts, we are unprepared to conclude that taking 30 minutes to ensure that no gas was present in the premises constituted an unreasonable presence on the part of defendants.

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

September 3, 1987

Before
Hon. WILLIAM J. BAUER, Chief Judge
Hon. RICHARD D. CUDAHY, Circuit Judge
Hon. FRANK H. EASTERBROOK, Circuit Judge

JACOB SAMPSON, Plaintiff-Appellant,	)	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 86 - 2133 v.	)	
JED WEIDELL, et al., Defendants-Appellees.	)	No. 84 C 6360 Abraham Lincoln Marovitz, Senior District Judge

This matter comes before the court for its consideration upon the "MOTIONS FOR RECONSIDERATION AND STAY OF MANDATE" filed herein on June 29 ,1987, by the pro se plaintiff-appellant. On considerion thereof.

IT IS ORDERED that the above motion is DENIED.

D13#768

SUPREME COURT OF THE UNITED STATES

No. A-246

JACOB SAMPSON,

Applicant,

v.

JED WEIDELL, ET AL.

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

UPON CONSIDERATION of the application of applicant,

IT IS ORDERED that the time for filing a petition for a writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including January 31, 1988.

/s/John Paul Stevens

Associate Justice of the Supreme Court of the United States

Dated this 23rd

day of September, 1987

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

Case Number 84 C 6360 Date 05/30/85

Name of Assigned Judge Abraham L. Marovitz

Sitting Judge if Other Than Assigned Judge Frank J. McGarr

Case Title Sampson v. Weidell, et al.

DOCKET ENTRY:

Plaintiff's letter of May 29 requesting a transfer of the above-referenced case to another court, or in the alternative, for consolidation with Case No. 84 C 7749 is denied.

date docketed June 4, 1985 Document #38

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

Case Number 84 C 6360 Date August 8, 1985

Name of Assigned Judge MAROVITZ

Case Title SAMPSON v. WEIDELL, et al.

MOTION: (a) Plaintiff

(b) SECOND MOTION FOR SANCTIONS FOR PERJURY

DOCKET ENTRY:

Plaintiff's first and second motion for sanctions for perjury is denied.Defendants' motion for summary judgment with supporting memorandum to be filed on or before 5 Sep 85. Defendant's response due on or before 19 Sep 85. Reply to response due on or before 30 Sep 85. Disposition date set for 24 Oct 85 at 10:00 a.m. Status hearing date of 12 Sep 85 at 10:00 is stricken.

date docketed Aug 12 1985 Document # 54

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

Case Number 84 C 6360 Date 17 Apr 86

Case Title Jacob Sampson vs Weidell, et al

DOCKET ENTRY:

Status hearing held. Plaintiff orally withdraws motion for injunction. Plaintiff's motion for evidentiary hearing of all defendants is denied. Plaintiff's memorandum in opposition to defendant's motion to amend motion for partial summary judgment due by 1 May 86. Answer due by 12 May 86. Reply to answer due by 19 May 86. (6) Ruling on motion to amend summary judgment set for 29 May 86 at 10:00 a.m. (7) Status hearing set for 29 May 86 at 10:00 a.m.

date docketed Apr 18 1986 Document # 87

RULES and REGULATIONS
PRACTICES and PROCEDURES

CHICAGO FIRE DEPARTMENT

ROBERT J. QUINN
Fire Commissioner

CURTIS W. VOLKAMER
Chief Fire Marshal

Section 26.106. Fire Prevention Inspections of Premises and Structures.The Director of the Bureau of Fire Prevention and those acting in his capacity or under his direction are empowered by the Municipal Code of Chicago to enter any building,structure, or premises, whether completed or in the course of construction, for the purpose of determining whether such buildings, structures, or premises have been or, are being constructed and maintained in accordance with the fire prevention regulations of the Code.

The Director of the Bureau of Fire Prevention shall make, or cause to be made, regular inspections, with sufficient frequency to secure efficient supervision of

all buildings, structures, or premises as specified in the Municipal Code of Chicago to ascertain the safety of occupants, to examine the working order of fire protection installations, the proper provision for and the maintenance of means of egress, the presence of fire hazards, and any violations of the fire prevention regulations of the Code.

63

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN THE MATTER OF:

JACOB SAMPSON, Plaintiff,	
v.	No. 84 C 7749
NANCY STIPEK, et al, Defendants.	Judge Plunkett

The deposition of Mr. Kenneth Knapcik, taken pursuant to notice and pursuant to the Rules of Civil Procedure for the United States District Court, the Northern District of Illinois pertaining to the taking of depositions for the purpose of discovery, taken before Ms. Vernita -Halsell-Powell, a Certified Shorthand Reporter and Notary Public within and for the County of Cook and State of Illinois, taken at Room 610 of City Hall, 121 North LaSalle Street, Chicago, Illinois, at 2:00 on the 13th day of November, 1986. APPEARANCES: MR.JACOB SAMPSON, Pro Se; MR.ARVIN BODDIE, Appeared on behalf of the Defendants.

Q. Since you mentioned the reason you were there is to verify there's a gas leak did you notice any gas leaks there?

A. Once we conducted the inspection,no

Q. I find it very important this statement particularly. What was the purpose of you staying there ?

A. Staying where ?

Q. On plaintiff's premises since there was no leak ?

A. I didn't stay there.

Q. How long did you stay there ?

A. A couple of minutes.

United States Patent [19]

Sampson

[11] **4,360,952**

[45] **Nov. 30, 1982**

[54] MEAT TENDERIZER

[76] Inventor: **Jacob Sampson**, 6138 N. Clark St., Chicago, Ill. 60660

[21] Appl. No.: **177,278**

[22] Filed: **Aug. 11, 1980**

[51] **Int. Cl.**³ **A22C 5/00**

[52] **U.S. Cl.** **17/45; 17/26**

[58] **Field of Search** 17/26, 25, 45

[56] **References Cited**

U.S. PATENT DOCUMENTS

1,991,439	2/1935	Wood	17/26
2,534,357	12/1950	Lang	17/26
2,583,199	1/1952	Bakewell	17/26
3,234,589	2/1966	Haynes et al.	17/25
4,270,244	6/1981	Lo Biondo et al.	17/26 X

FOREIGN PATENT DOCUMENTS

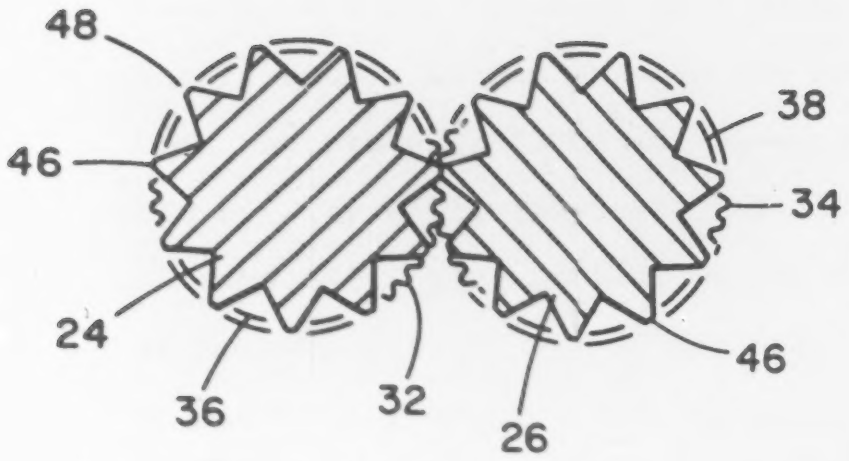
179385 3/1906 Fed. Rep. of Germany 17/26

Primary Examiner—Willie G. Abercrombie
Attorney, Agent, or Firm—McDougall, Hersh & Scott

[57] **ABSTRACT**

A meat tenderizing machine formed of a pair of spaced parallel surfaces moving in the same direction but with one surface moving at a speed differing from the other with teeth extending from the surfaces for engagement with the meat during passage between the surfaces whereby the meat is stretched during passage between said surfaces.

5 Claims, 7 Drawing Figures



United States Patent [19]

Holz

[11] **Patent Number: 4,612,682**

[45] **Date of Patent: Sep. 23, 1986**

[54] APPARATUS FOR TREATING MEAT

[75] Inventor: **Ernst Holz**, Heidenheim, Fed. Rep. of Germany

[73] Assignee: **Holac Maschinenbau GmbH**, Heidenheim, Fed. Rep. of Germany

[21] Appl. No.: **671,105**

[22] Filed: **Nov. 13, 1984**

[30] **Foreign Application Priority Data**

Jul. 12, 1983 [DE] Fed. Rep. of Germany 3344284

[51] **Int. Cl.**[4] **A22C 9/00**

[52] **U.S. Cl.** **17/26**

[58] **Field of Search** 17/26, 27

[56] **References Cited**

U.S. PATENT DOCUMENTS

881,204	3/1908	Smith	17/26
1,986,075	1/1935	Spang	17/26
1,991,439	2/1935	Wood	17/26
2,291,809	8/1942	Jackson	17/27 X
2,640,334	6/1953	Spang	17/26 X
2,682,078	6/1954	Brown	17/26
2,690,011	9/1954	Schulze	17/26 X
4,525,896	7/1985	Leining et al.	17/26 X

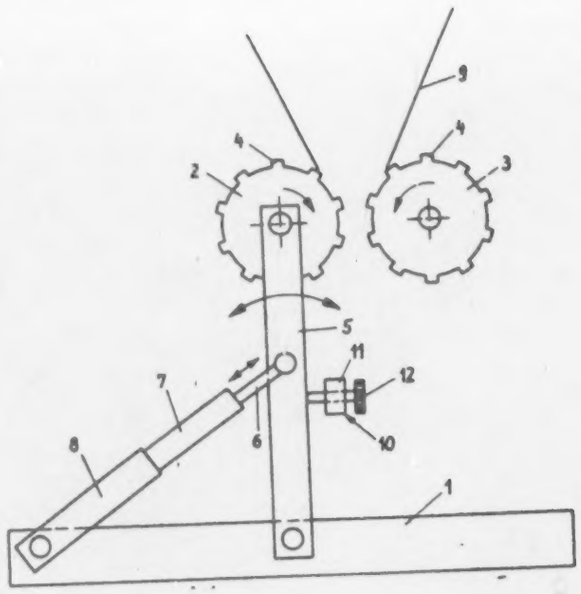
Primary Examiner—Willie G. Abercrombie

Attorney, Agent, or Firm—Walter H. Schneider

[57] **ABSTRACT**

Apparatus for treating meat, in particular for the purpose of improving its ability to absorb a curing liquid prior to cooking, comprises a frame mounting at least two spaced-apart side-by-side rollers which are rotated in opposite senses as meat to be treated is passed therebetween. To improve the effectiveness of treatment, the rollers are formed as pressure rollers arranged such that the spacing therebetween automatically varies to accommodate different thicknesses of meat. Preferably, each pressure roller is removably mounted in the frame by connecting one end of the roller to a drive shaft by a quick-release coupling and by mounting the other end in a bearing assembly releasably connected to the frame.

2 Claims, 4 Drawing Figures



Quick and easy exchange of the pressure rollers can be achieved by arranging for each pressure roller to be connected at one end to a driving shaft by a quick-release coupling, and to be mounted at its other end in a bearing assembly releasably connected to the frame.

Due to this arrangement removal of a pressure roller simply involves the release of the roller from the quick-release coupling, and its removal together with the bearing assembly from the frame.

Various known couplings may be used as said quick-release coupling. In one possible arrangement, the coupling consists of an adaptor which is provided on its side facing the pressure roller with a stepped bore into which extend a projection and a drive-connecting piece rigid with the roller.

The pressure-roller drive connection is made via the drive connecting piece which may, for example, be provided with two opposed flat zones that engage with corresponding surfaces of the stepped bore of the adaptor. Of course, instead of a drive-connecting piece of this form, other rotary connections can be used, for example, key and keyway, splined shaft or jaw couplings.

The bearing assembly may comprise a bearing disc which is provided with a bearing arranged to receive a stub axle of the pressure roller. By arranging for the outside diameter of the bearing disc to be greater than the maximum diameter of the pressure roller, and also for the bearing disc to releasably seat in an aperture in the frame, once the bearing disc has been removed from the frame, the pressure roller can be simply withdrawn laterally through the vacated frame aperture on account of its smaller diameter.

One possible way of releasably connecting the bearing disc to the frame consists in providing the bearing disc with a stop ring of greater diameter than the bearing disc, this stop ring being connected to the frame by a quick-release locking arrangement.

The locking arrangement may take any suitable form, such as, for example, a bayonet coupling, thumbscrews or the like.

Advantageously, a displaceable stop is provided in the frame for setting and adjusting a minimum distance between the pressure rollers.

This stop is set according to the approximate size of the meat to be treated such that the meat is reliably drawn in between the two pressure rollers. Fine variations of the spacing between the rollers is effected by means of the displacement mechanism in dependence on the preselected pressure the latter causes the rollers to exert on the meat being treated.

Adjustment of the stop may easily be achieved by making it in the form of an adjusting screw which is screw-engaged in a cross member of the frame and is arranged to contact the displacement mechanism or the swivel arm.

Preferably, the pressure rollers have respective independent drive mechanisms, for example, separate drive motors. Such an arrangement enables the pressure rollers to be driven at different speeds, so that in addition to the compressive forces, shear forces can also be exerted on meat being treated which further improves tearing apart of the muscle tissue or protein cells of the meat.

If required, more than one pair of opposed pressure rollers can be provided, such further pairs of pressure rollers being arranged spaced apart from, but adjacent to, each other in the direction of advance of meat undergoing treatment.

BRIEF DESCRIPTION OF THE DRAWINGS

Apparatus, embodying the invention, for treating meat to improve its ability to absorb a curing liquid, will now be particularly described, by way of example, with reference to the accompanying diagrammatic drawings, in which:

FIG. 1 is a simplified side elevation of the apparatus;

FIG. 2 is an enlarged partial longitudinal section through a pressure roller of the apparatus showing its manner of mounting;

FIG. 3 is a view of the end of the FIG. 2 pressure roller that is arranged to connect to a drive shaft of the apparatus;

FIG. 4 is a view similar to FIG. 3, but on a reduced scale, showing a different form of roller to that of FIG. 3.

DESCRIPTION OF THE PREFERRED EMBODIMENT

The apparatus shown in the drawings comprises a frame 1, not illustrated in detail, upon which are mounted two spaced-apart opposed parallel pressure rollers 2 and 3. The pressure rollers 2, 3 are at least approximately cylinder-shaped and have distributed over their peripheral surfaces a plurality of pins, ribs, hammer-like projections 4 or the like. For simplicity, these components will be referred to below as ribs 4.

The ribs 4 extend along the generatrices of the rollers over substantially the whole length thereof. Of course, these ribs may alternatively be discontinuous in form and may, instead of being arranged parallel to the longitudinal axis of the pressure roller, be arranged at an angle to this axis, that is, helically of the roller.

Whereas one pressure roller 3 is mounted in a fixed position in the frame 1 by means of frame sections (not shown), the other pressure roller 2 is pivotably connected to the frame 1 by a swivel arm 5. The mounting of pressure roller 2 in the swivel arm 5 can be effected in the same manner as the mounting of pressure roller 3 in the frame itself and preferably both rollers 2, 3 are mounted in a manner facilitating their removal. One suitable form of mounting arrangement for the rollers will be described hereinafter with reference to FIG. 2.

The swivel arm 5 is coupled to the piston rod 6 of a pneumatic cylinder 7 which in turn is mounted pivotably in the frame 1 by means of a supporting arm 8.

Meat products to be treated are fed into the apparatus from above via a funnel 9 to pass down between the two pressure rollers 2 and 3.

A cross member 11 rigid with the frame 1 acts as a stop 10 for setting a minimum gap between the two pressure rollers 2 and 3, this gap being made adjustable by means of an adjusting screw 12 screwed through the cross member 11 and abutting the front of the swivel arm 5.

The manner of mounting of the pressure rollers 2 and 3 can be seen clearly from FIGS. 2 and 3, and in particular from FIG. 2. One end of each roller 2, 3 is connected via a respective quick-release coupling 13 to 17 to the drive shaft (not shown) of a respective motor. Each coupling includes an adaptor 13 which is connected in a manner not shown to the corresponding motor drive shaft. On its side facing towards the pressure roller 2 or 3, the adaptor 13 is formed with a stepped bore. The larger diameter portion of the stepped bore receives a

SUMMARY REPORT-

SUBJECT: COMPLAINT REGISTER INVESTIGATION
No.:- 139362

CONTINUED - PAGE THREE (3)

RECOMMENDATION: That this complaint be filed without any further action, and that no additional complaints be taken from Mr. Jacob SAMPSON.

DATE INITIATED: 7 July 1984.

DATE COMPLETED: 13 July 1984.

ELAPSED TIME: 6 Days.

Signed: Lieut. Sherwyn K. Bloome, #565
24th District

APPROVED:

Signed: Nestor W. Chakonas
Commander, 24th District Date 13 July 84

CHICAGO & ASHLAND MEDICAL CENTER
1553 W. Chicago Ave. (Rear)
Chicago, Illinois 60622

March 10, 1986

AFFIDAVIT

ANDREW MIESZ M.D. PhD., being first duly sworn upon his oath deposes and states:

1. That he is a Medical Doctor duly admitted to practice Medicine in the State of Illinois, as general practitioner-cardiologist, and is Chief Physician at the Chicago & Ashland Medical Center.

2. That Mr.Jacob Sampson first visited his office on March 29, 1985, complaining of severe posterior chest pain and shortness of breath, since the attack on him by hoodlums on September 5, 1984.

3. Reviewing the chest x-rays of September 5, 1984, January 15, 1985 and February 19,1985,it revealed increased markings over his left lower lobe, which correspond to a haemothorax, with the usual organization of the exsudate and blood.

4. Some consideration would include a possible lung contusion.

5. That Sampson's only medication for pain suppression was the Extra - strenght TYLENOL, which he discontinued due to the recent scare with cyanide poisoning.

6. That to the best of Dr.Miesz's knowledge, there is no known cure or remedy. This is a irreversible condition exasperated by exertion, weather condition and/or cough, which will affect Sampson's productive life, and it would be difficult to assess future medical expenses.

7. That if called to testify as a witness, affiant could competently testify thereto.

FURTHER AFFIANT SAYETH NOT.

Signed: Andrew Miesz, M.D.,PhD.

Subscribed & Sworn before me
this 10th day of March 1986

Signed: Notary Public

McDOUGALL, HERSH & SCOTT
Attorneys at Law
135 South La Salle Street
Chicago, Illinois 60603

May 4, 1987

Mr. J. Sampson
6138 N. Clark St.,
Chicago, Ill.60660

Dear Mr. Sampson:

With respect to your U.S.Patent No.4,360,952. Claims 1 & 2 would read on the use of the devices of the Holz patents as long as they operated in a manner whereby "one surface moving at linear speed different from the other to stretch the meat between the engaged portions."

While the Holz Patent No. 4612683 does not disclose such operation, the Holz Patent No.4612682 described operation in which: "The driving of the two pressure rollers 2 and 3 is preferably effected by separate motors as ... at appropriate speeds,namely at different speeds. In this way, in addition to effecting treatment under pressure of a meat product, a shearing action can

be obtained .... is achieved with an even greater opening of protein cells."

IF THE HOLZ DEVICE IS OPERATED IN THIS MANNER, ITS USE WOULD CONSTITUTE A DIRECT INFRINGEMENT OF THE METHOD CLAIMS.

There would be contributory infringement if the device were made in the U.S.

Sincerely,

Signed: Herman Hersh